IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 527 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VISHAL VALLABHBHAI MADAM

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 527 of 2001

MR YOGESH S LAKHANI for Petitioner No. 1

MR SS PATEL Ld. APP for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 18/04/2002

ORAL JUDGEMENT

The applicant is the original accused of the crime registered at Jam-Khambhaliya police station vide CR No. II-29/2000 for the offence punishable under Sec. 25(i)(a) and 25(i)(d) of the Arms Act and under Sec. 135(1) of the Bombay Police Act.

The petitioner came to be arrested at Baroda and, thereafter he was produced before the Ld. J.M.F.C. Chikhali and a police remand was sought. Ld. JMFC, Chikhali after hearing the parties remanded the applicant to the police custody for a period of four days vide order dated 3.10.2001. By that time, the Investigating Agency had brought the accused to Jam-Khambhaliya and was produced before the Ld. J.M.F.C. on 6.10.2001 and further police remand was prayed. Ld. J.M.F.C., Jam-Khambhaliya has after considering the earlier order passed and other relevant facts granted further remand for the period of 1 and 1/2 days.

As the Investigating Agency was not satisfied with the order, it moved the Court of Sessions by filing revision application being Criminal Revision Application No. 143 of 2001 before the Ld. Sessions Judge, Jamnagar. The applicant was also not satisfied with the order passed by the Ld. J.M.F.C., Jam-Khambhaliya granting further remand of 1 and 1/2 days, he also preferred a revision application being Criminal Revision Application No. 146 of 2001.

Both the revision applications came to be transferred for hearing and disposal to Ld. Addl. Sessions Judge, Jamnagar and after hearing the learned counsel appearing for the parties, dismissed the revision application preferred by the present applicant and partly allowed the revision application being Criminal Revision Application No. 143 of 2001 and granted police remand for a further period of 4 days. However, as the order is under challenge dated 25.10.2001 is a common order, it is submitted that the applicant has challenged the legality and validity of the order in its entirety and the same should be scanned and analysed in that perspective. For short, it is submitted that the order granting police remand for 1 and 1/2 days by Ld. J.M.F.C. Jam-Khambhaliya whether was a legal order also be scrutinised by this Court.

I have seen both the orders passed by both the Courts below and the affidavit of resistance filed by Police Inspector, Local Crime Branch, Jamnagar. Ld. JMFC while dealing with the application for remand preferred by the police has considered all relevant aspects and the earlier order granting police remand. It seems that considering the travelling period the ld. Magistrate has granted one more opportunity to the Investigating Agency by extending the period of remand of

1 and 1/2 days. The period granted by the Ld. JMFC indirectly speaks that as such no further police remand is required to be granted. If police intends to interrogate the accused at the concerned police station where the crime has registered than the local officers working in the very police station can have an opportunity to interrogate the accused in detail.

During the course of submission, I am told that as the police was not able to file the charge-sheet within the period prescribed in view of CrPC, the applicant has been granted default bail on 26.2.2002. As the applicant is in judicial custody for some other offence, he has not executed any formal bail bond or personal bond. It cannot be ignored that order granting bail is till in force as valid order. Police in such a case should pray for cancellation of bail first on merit and thereafter if certain facts or very serious contingency is brought to the notice of the Court, request for police remand can be considered.

Considering the nature of the allegations made in the complaint and record asking police remand and the opportunity to the Investigating Officer available to interrogate the accused as to the Arms mentioned in the complaint, this court is of the view that there was no need for the ld. Sessions Judge to extend the period of remand for 4 days. This Court can today say that the accused can be handed over to the local police for 1 and 1/2 day as ordered by the Ld. JMFC in absence of formal second revision, but as the accused is already granted default bail for the crime registered as Jam-Khambhaliya Police Station, it would not be legal or otherwise proper to pass such an order in each case where the accused is held entitled for default bail. The formal order of police remand would frustrate the entire scheme. The maximum opportunity even otherwise was available and the same was granted to the Investigating Agency. So, even on merits, for police remand, the Investigating Agency had no good case, even on 6.10.2001 when further remand was prayed before the Ld. JMFC, Jam-Khambhaliya.

Mr. SS Patel learned APP has submitted that as the present applicant is in judicial custody and is wanted in other criminal offence, he has been taken to Bombay in connection with the crime registered at Sakinaka Police Station. So, if the Investigating Agency is interested in further interrogation the present applicant in connection with the crime registered at Jam-Khambhaliya police station, than the police machinery may take advantage of this situation. Even the accused

can be interrogated while in judicial custody. Formal police remand in such situation is not required when earlier for reasonable good period, police remand has been granted.

It can be technically argued by Ld. APP that the order granting remand for a period of 1 and 1/2 days by the JMFC, Jam-Khambhaliya becomes final and therefore, at least for that period, the accused should be handed over to the police but in view of the above stated facts and especially when the accused is granted default bail, this request is not acceptable, hence, the same is turned down.

For short, this revision application is allowed. The common Judgment and order passed by Ld. Addl. Sessions Judge, Jamnagar in Criminal Revision Applications no. 143 of 2001 and 146 of 2001 are hereby quashed and set aside.

Rule is made absolute. DS Permitted.

(C.K. BUCH, J.)
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